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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/738,454

12/16/2003

K. Dane Wittrup

97-99E

8855

23713

7590

11/16/2007

GREENLEE WINNER AND SULLIVAN P C

4875 PEARL EAST CIRCLE

SUITE 200

BOULDER, CO 80301

EXAMINER

GUZO, DAVID

ART UNIT

PAPER NUMBER

1636

MAIL DATE

DELIVERY MODE

11/16/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/738,454

Applicant(s)

WITTRUP ET AL.

Examiner

David Guzo

Art Unit

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 27-97 is/are pending in the application.
- 4a) Of the above claim(s) 1-9 and 30-97 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-14, 17-21, 24 and 27-29 is/are allowed.
- 6) ☒ Claim(s) 10, 11, 15, 16, 22, 23 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

### **Detailed Action**

Claims 1-9 and 30-97 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 5/20/05.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 10-11, 15-16, 22-23 and 25 stand rejected under 35 U.S.C. 102(a) as being anticipated by Boder et al.

This rejection is maintained for reasons of record in the previous Office Action (mailed 2/28/07) and for reasons outlined below.

Applicants traverse this rejection by stating that:

Boder and Wittrup are the sole inventors of all the subject matter disclosed in the Boder et al. reference. In addition to Boder and Wittrup, Kieke and Kranz are also inventors of claims involving anti-T cell receptor antibodies or T cell receptors. According to the Declaration of K. Dane Wittrup, David M. Kranz, Michele Kieke and Eric T. Boder submitted November 17, 2006, all of Wittrup, Kranz, Kieke and Boder are inventors of at least one claim pending in the above-referenced application.

Applicants indicate that in view of the above statement and the previously submitted Declarations by the inventors, the outstanding rejection under 35 USC 102(a) is overcome.

Applicant's arguments filed 8/28/07 have been fully considered but they are not persuasive. Initially, with regard to the instant statement provided by applicants' representative concerning the authorship of the Boder et al. reference and the inventorship of at least one claim in the instant application, it is noted that statements seeking to attribute inventorship must be provided by the inventors themselves (See for example, MPEP 716.10).

Applicants' representative states in the instant remarks that Boder and Wittrup are the sole inventors of all of the subject matter disclosed in the Boder et al. reference and that in addition to Boder and Wittrup, inventors Kieke and Kranz are also inventors of claims involving anti-T cell receptor antibodies or T cell receptors. With respect to this statement, it is noted that none of the claims rejected over the Boder et al. reference recite anti-T cell receptor antibodies or T cell receptors. While the information concerning the contributions of inventors Kieke and Kranz is noted, this information does not address the subject matter of the claimed invention under rejection over Boder et al. Also, applicants' representatives statement appears to contradict the Declaration filed 11/17/06 wherein said Declaration stated that "...**all named inventors** (emphasis added) made original intellectual contributions to the conception of the invention as claimed **in the claims that were rejected over the Boder et al. abstract** (emphasis added) used in the outstanding 102(a) rejection". The rejection therefore stands.

Any rejections or objections not repeated in this Office Action are withdrawn.

Claims 12-14, 17-21, 24 and 27-29 are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Guzo, Ph.D., whose telephone number is (571) 272-0767. The examiner can normally be reached on Monday-Thursday from 8:00 AM to 5:30 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach, Ph.D., can be reached on (571) 272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David Guzo  
October 30, 2007

  
DAVID GUZO  
PRIMARY EXAMINER